

CIVIL JURY INSTRUCTION CHART

Case No. 21-56

Case Name: *Walsh v. Dayemi et al.*

C# = Court's instruction number

J# = Joint instruction number

P# = Plaintiff's instruction number

D# = Defendants' instruction number

COURT'S PROPOSED INSTRUCTIONS

Court's	#	Source	Objection	Given
Functions of Court & jury	C1	1.01		x
What is evidence	C2	1.04		x
What is not evidence	C3	1.06		x
Notes	C4	1.07	Same as J3	x
Determining facts	C5	1.08		x
Weighing evidence – reasonable inferences	C6	1.11		x
Direct/circumstantial evidence	C7	1.12		x
Testimony of witnesses	C8	1.13		x
Number of witnesses	C9	1.17		x
Use of witnesses or exhibits	C10	1.18		x
Burden of proof – preponderance of the evidence	C11	1.27		x
Presiding juror selection	C12	1.32		x
Communicating with court	C13	1.33	Same as J4	x
No outside communication	C14	AO recommendation		x
Judge's comments to lawyer	C15	2.14		x

Stipulated facts	C16	2.05		x
Adverse inference from missing witness	C17	1.19		withdrawn
Elements	C18	29 U.S.C. § 203(m); <i>Kubiak v. S.W. Cowboy, Inc.</i> , Case No. 12-cv-1306-J-34-JRK, Doc. 236 (M.D. Fla. March 17, 2016)	P: wants additional language in paragraph 3. D: wants to add additional language	x

JOINT PROPOSED INSTRUCTIONS

Joint	#	Source	Objection	Given
Corporation	J1	1.03		x
Demonstrative evidence	J2	1.24		refused
Note-taking	J3	1.07	Same as C4	withdrawn
Communication with the Court	J4	1.33	Same as C13	withdrawn

PLAINTIFF'S PROPOSED INSTRUCTIONS

Plaintiff's	#	Source	Objection	Given
Defendants liable under FLSA as employers	P1	11th Cir. Instruct. 4.14, *1 (Civ. Cases) (2018); 5th Cir. Jury Instruct. 11.24-B (Civ. Cases) (2016). 29 U.S.C. § 203(d); 29 U.S.C. § 216(c); <i>Walsh v. Saline County Ambulance Serv., Inc.</i> , 2022 WL 2305681, at *2 (S.D. Ill. June 27, 2022)		refused
Employer defined	P2	29 U.S.C. § 203(d); <i>Falk v. Brennan</i> , 414 U.S. 190, 195 (1973); <i>Luder v. Endicott</i> , 253 F. 3d 1020, 1022 (7th		refused

Plaintiff's	#	Source	Objection	Given
		Cir. 2001); and other case law		
General characteristics of tips	P3	29 U.S.C. § 203(m); 29 C.F.R. § 531.52 (2018); <i>Dayton v. Fox Rest. Venture, LLC</i> , No. 1:16-CV-02109-LJM-MJD, 2017 WL 286788, at *3 (S.D. Ind. Jan. 23, 2017)		refused
Tip pools and tip voluntariness	P4	29 U.S.C. § 203(m)(2)(A); 29 C.F.R. § 531.54; case law		refused
Verdict Form				X (as revised)

DEFENDANTS' PROPOSED INSTRUCTIONS

Defendants'	#	Source	Objection	Given
Introducing the Secretary and Labor, Wage, and Hour agency	D1			x
Defendants are employers under FLSA	D2	Stipulations 3 and 6		X (as revised)
Defining minimum wage	D3	8th Circuit Pattern Jury Instruction No. 16.02; 29 U.S.C. § 206(a)(1)(c)		X (as revised)
Burden of proof	D4	<i>Anderson v. Mt. Clemens Pottery Co.</i> , 328 U.S. 680, 686-87 (1946).		refused
Defining valid tip pool	D5	<i>Williams-Greer v. J. Alexander's Restaurants, Inc.</i> , 277 F.R.D. 374 (N.D. IL 2011); 29 C.F.R. § 531.54		refused

Defining valid voluntary tip pool	D6	<i>Berger v. Perry's Steakhouse of Ill., LLC</i> , 430 F. Supp.3d 397, 404 (N.D. Il. 2019).		refused
Damages	D7	3.09		refused
Instructing how to calculate back wages for invalid tip pool	D8	29 U.S.C. § 206(a)(1)(c)		x
Defining good faith to liquidated damages	D9	<i>Shea v. Galaxie Lumber Constr. Co. Ltd.</i> , 152 F.3d 729 (7th Cir. 1998).		refused
Verdict Form A	10			refused
Verdict Form B	11			refused